HIGH COURT OF UTTARANCHAL AT NAINITAL

Government Appeal No. 1118 of 2001
(Old No. 1740 of 1986)

State of U.P. ..... Appellant

Versus

Rajendra Dutt son of Narain Dutt R/o Ediwal Syun,
P.S. Pauri, District Pauri Garhwal ..... Respondents

Dated: 15.12.2006

Hon'ble Rajesh Tandon, J.

Heard A.G.A. for the appellant and Sri Sanjeev Kumar Sah, Amicus curiae for the respondent.

Present Government appeal has been preferred against the judgment and order dated 18.3.1986 passed by the Munsif Magistrate, Pauri Garhwal in Criminal Case No. 38 of 1984 under section 409 I.P.C. thereby acquitting the accused respondent.

Leave to file the appeal has been granted by Allahabad High Court on 10.1.1991 and lower court's record has been summoned. I have perused the judgment and order passed by the learned Magistrate and have gone through the record.

According to the prosecution case accused respondent has misappropriated Rs.1900/- from the Co-operative society, Bamthi. F.I.R. to this effect has been lodged in P.S. Pauri Garhwal by Sri B.M. Purohit, Co-operative Development Officer on 20.3.1978. The police after investigating the case submitted charge sheet against the accused. Charge under section 409

I.P.C. was framed against the accused on 17.5.1984, who denied the same and claimed to be tried.

Several opportunities were given to the prosecution to prove evidence and to examine the witnesses by the Munsif Magistrate but the prosecution has failed to produce witnesses in the case. Therefore, on 18.3.1986, the learned Magistrate concluded the evidence of the prosecution and after recording the statement of the accused under section 313 Cr.P.C. finally decided the case and acquitted the accused.

Only one witness Toti son of Sobatu was examined as P.W.1 by the prosecution. On the basis of statement of this witness no case under section 409 I.P.C. is made out against the accused. The appeal has no merit and is hereby dismissed.

Dated: 15.12.2006 **Rajesh Tandon, J.**
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